

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-212490.2**DATE:** November 15, 1983**MATTER OF:** PhilCon Corporation**DIGEST:**

Prior decision dismissing protest because the protester was not an interested party is affirmed where the protester has failed to demonstrate that the decision was based on an erroneous interpretation of fact or law or information not previously considered.

PhilCon Corporation (PhilCon) requests reconsideration of our decision in the matter of PhilCon Corporation, B-212490, September 30, 1983, 83-2 CPD 396, which dismissed the protest because PhilCon was not an interested party in the award of a contract under Veterans Administration (VA) Project No. 351-044. For the reasons that follow, we affirm our prior decision.

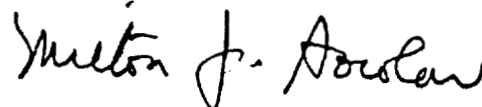
PhilCon, as a supplier of underground heat distribution (UHD) systems, must have its system approved under multi-agency prequalification procedures through issuance of a letter of acceptability to be entitled to supply its system on projects undertaken by the participating agencies, which include the VA. The Federal Agency UHD Systems Committee (Committee), which administers the prequalification procedures, issued its only letter of acceptability for prequalification of a UHD system to United States DuraCon Corporaton (DuraCon) on September 25, 1981. We held that PittCon Preinsulated Pipes Corporation (PittCon), which purchased DuraCon on August 12, 1981, and not PhilCon, was the rightful owner of that letter of acceptability because the Committee intended that PittCon be the rightful owner and because PhilCon had no connection then with PittCon. We concluded that since PhilCon lacked the requisite letter of acceptability, PhilCon was ineligible for award and, therefore, not an "interested" party under our Bid Protest Procedures, 4 C.F.R. § 21.1(a) (1983), whose protest allegations we will consider.

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PhilCon argues that the Committee did not intend that PittCon be the rightful owner of the letter of acceptability issued to DuraCon. Specifically, PhilCon contends that if the Committee intended that PittCon be the rightful owner, it should have addressed the letter of acceptability to PittCon, not DuraCon, and that the Committee only issues letters of acceptability to organizations which apply for them, and PittCon did not apply. However, the Committee chairman has informed us that, although DuraCon, not PittCon, applied for and was issued the letter of acceptability, it was the Committee's understanding that PittCon owned DuraCon and that, therefore, PittCon would be the rightful owner. Accordingly, PhilCon has failed to demonstrate that the Committee did not intend that PittCon be the rightful owner of the letter of acceptability issued to DuraCon.

PhilCon also contends that when PittCon purchased DuraCon on August 12, 1981, it did not purchase ownership of the letter of acceptability, but rather purchased only those assets listed in the sales agreement. However, the letter of acceptability was not issued until September 25, 1981, and thus could not have been listed as an asset in the sales agreement. Further, the sales agreement states that both seller and buyer (PittCon) shall strive to "achiev[e] the mutual objective . . . [of] obtaining the . . . letter of acceptability." In our view, this language indicates that the parties to the sales agreement intended that a letter of acceptability upon issuance belong to the buyer. We cannot conclude that the August 12 sales agreement precluded PittCon from owning the letter of acceptability issued to DuraCon.

For the above reasons, the protester has failed to demonstrate that our prior decision was based on information not previously considered or an erroneous interpretation of fact or law. 4 C.F.R. § 21.9(a). Therefore, it is affirmed.



Acting Comptroller General
of the United States